

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 498 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

SITARAMI TULSIDAS & ANR.

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for the appellants
LAPP Mr.Y.F.Mehta for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 09/01/97

ORAL JUDGEMENT (Per N.J.Pandya,J.)

The accused-appellants were facing charge under
Narcotic Drugs and Psychotropic Substances Act for

unauthorisedly possessing 130 grams of Ganja and 15 grams of Charas. It is reported to the PSI of Thasra Police Station on or about 17-6-1988 at Sevaliya outpost that two accused, who are the present appellants, respectively father and son, are indulging in illegal activity of selling Narcotics. He, therefore, called panchas and after preparing first part of the panchnama in police station, they proceeded to the residence of the accused along with the policy party. The raid proved successful, articles were seized, sent for laboratory examination and trial started. At the end of the trial, first two accused came to be convicted for offence under Sec.20(b)(1) as well as 20(b)(ii) of NDPS Act and each one of them came to be awarded 5 years' R.I. and 10 years R.I. with fine of Rs.50,000/- and Rs.1,00,000/respectively. Both substantive sentences were ordered to run concurrently. In default of payment of fine, in respect of first offence, six months R.I. was awarded and for the second, R.I. for one year in default was awarded. There was charge under Sec.65(e) of Bombay Prohibition Act, but no separate punishment has been awarded for that offence.

2. Ms.Dutta, appearing for the accused,drew our attention to the deposition of said P.S.I. Joshi, p.w.1, Exh.22, page 49, where he narrates how he received the information and proceeded to conduct the raid. In the cross examination, paragraphs 7 & 8,page 42, she has pointed out admission on the part of the PSI Shri Joshi that though the information received by him was written down, inform of a kachha note, his superiors were not informed, nor a copy was sent to them. He further indicates in the cross examination, para 8, that the accused were not informed in writing and further from his cross examination, it is quite clear that the requirement of Sec.50 of the NDPS Act, namely, to afford an opportunity to the accused to be examined and searched in presence of either a Gazetted Officer or a Judicial 1st Class Magistrate, has not been fulfilled. This being mandatory, as laid down by the Hon'ble Supreme Court in 1994 SC 1872, it is obvious that the order of conviction passed by the trial Court cannot be sustained and the order of conviction and sentence passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No.248 of 1988 on 31-5-1990 is required to be set aside.

3. In the result, the appeal is allowed. The order of conviction and sentence passed by the learned Additional Sessions Judge, Nadiad in Sessions Case no.248 of 1988 on 31-5-1990 is hereby set aside. The accused-appellants are ordered to be set at liberty

forthwith, if not required in any other case. Fine, if
paid, is ordered to be refunded.

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